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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

SACRAMENTO COUNTY, SACRAMENTO SHERIFF'S DEPARTMENT, JAMES E. SMITH,
Petitioners,

v.

TERI LEWIS AND THOMAS LEWIS, PERSONAL REPRESENTATIVES OF THE ESTATE OF PHILIP LEWIS,
Respondents,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AMICUS BRIEF OF STOPP (SOLUTIONS TO THE TRAGEDIES OF POLICE PURSUITS) IN SUPPORT OF RESPONDENTS

ANDREW C. CLARKE
STOPP
SOLUTIONS TO THE TRAGEDIES OF POLICE PURSUITS
6256 POPLAR AVENUE
MEMPHIS, TENNESSEE 38119
(901) 680-9777

IKON Document Services Memphis, Tennessee

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QUESTION PRESENTED

I. Whether a police officer who displays deliberate indifference or reckless disregard to the risks of a high-speed pursuit to the public is liable for injuries proximately caused to the suspect and/or innocent third party for violating the victim's substantive due process rights.

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INTEREST OF AMICUS CURIAE

STOPP is an acronym for Solutions to the Tragedies of Police Pursuits.[1] STOPP is a nationwide, non-profit organization based in Jackson Hole, Wyoming dedicated to reducing the number of tragedies which occur each year as a result of police pursuits. STOPP's four main goals are:

1) to provide victim support services by counseling victims of high speed pursuits and their families;
2) to increase public awareness concerning the tragedies resulting from police pursuits and to inform the public of the risks of pursuits;
3) to work with law enforcement agencies to adopt clear and unambiguous policies consistent with law enforcement's primary mission of protecting the public and the development of new technologies which will reduce the need and length of high speed pursuits; and
4) to advocate the enactment of stiffer penalties for those who choose to flee from police.

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[1] Pursuant to Supreme Court Rule 37.6, Amicus would state that neither counsel for the Plaintiff nor Defendant authored this brief in whole or in part and that no person or entity other than Amicus has made a monetary contribution regarding the submission of this Brief. Letters of consent to the filing of this Amicus Brief have been lodged with the Clerk of the Court pursuant to Rule 37.2.

STOPP was founded by Lynne Dunn, an attorney in Sea Isle City, New Jersey, Gerald LaCrosse, a city councilman in Beachwood New Jersey, and Robert Ewing, a retired businessman from Jackson Hole, Wyoming. STOPP is comprised of victims of pursuits, their families, law enforcement officers, lawyers, senators congressmen, city councilmen, criminologists and researchers on police pursuits who all share the common goal of reducing the number of tragedies resulting from police pursuits.

STOPP submits that the issues involved in this appeal concern important questions of constitutional law which will impact the rights of persons injured during the course of police pursuits and submits this brief as Amicus Curiae to present its experience and views regarding police pursuits for this Honorable Court's consideration.

STATEMENT OF THE CASE

Amicus adopts the Statement of the Case presented by the Respondent.

SUMMARY OF ARGUMENT

The police vehicle is the last unregulated weapon in a police officer's arsenal. Each year thousands of people are injured and killed during the course of high speed pursuits. While many injuries occur to the driver of the fleeing vehicle, many totally innocent third parties are injured and killed during the course of high speed pursuits. The data collection efforts on both firearm and

pursuit related deaths is in need of improvement before one can state empirically which activity causes more deaths. However, many criminologists believe that more people are killed each year during the course of high-speed pursuits than any other police activity, including firearms.[2] Given that thousands of people are injured and killed during the course of high speed chases each year, Amicus submits that police pursuits should be restricted by the substantive due process component of the Fourteenth Amendment and that officers should not be given unbridled discretion with respect to the instigation, continuation and termination of pursuits.

At the present time, there is a conflict among the Circuits regarding the proper standard to be employed in substantive due process police chase cases: 1) "shocks the conscience" and 2) "deliberate indifference" or "reckless disregard." Amicus submits that the "shocks the conscience" standard is undefinable and will not serve to provide either law enforcement or the public with a meaningful standard from which they can take steps to reduce the number of tragedies from police pursuits.

Amicus submits that the "deliberate indifference" or "reckless disregard" standard governing other law

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[2] See William A. Geller & Hans Toch, And Justice for All, Police Executive Research Forum: Washington, D.C. (1992); Geoffrey P. Alpert & Lorie A. Fridell, Police Vehicles and Firearms: Instruments of Deadly Force, Waveland Press (1992); and Michael Charles et al., Police Pursuit in Pursuit of Policy: The Pursuit Issue, Legal and Literature Review, and an Empirical Study - Summary Report, AAA Foundation for Automotive Safety, (April 1992).

enforcement actions will provide both law enforcement and the public with a familiar standard from which to formulate training and policies to reduce the number of injuries or deaths stemming from pursuits. Imposing liability for violating a victim's substantive due process rights under a "deliberate indifference" or "reckless disregard" standard will not result in a constitutionalization of tort law. This standard would only seek to hold an officer liable for injuries to a victim resulting from a pursuit when an officer consciously disregards a known danger to a victim or class of victims during the course of a pursuit.

ARGUMENT

I. WHETHER A POLICE OFFICER WHO DISPLAYS DELIBERATE INDIFFERENCE TO OR RECKLESS DISREGARD OF THE RISKS OF A HIGH-SPEED PURSUIT TO THE PUBLIC IS LIABLE FOR INJURIES PROXIMATELY CAUSED TO THE SUSPECT AND/OR INNOCENT THIRD PARTY FOR VIOLATING THE VICTIM'S SUBSTANTIVE DUE PROCESS RIGHTS.

On May 3, 1988, John Basaman was driving home from a day trip to Philadelphia along with his wife and children. As he entered a controlled intersection in Evesham Township, N.J., his car was struck by a man being chased by the police [for a minor traffic offense]. His wife and infant son were killed and his two year old son was critically

injured. The Basaman family lived not more than a mile from us.

Just three days later, on May 8, 1988, Erin Walsh, a neighbor and schoolmate of my daughter's, was coming home from her job at a handicapped facility. A man being chased by the police [again, for a minor traffic offense] crossed into her lane and collided head-on with her car. Tragically, not only was Erin killed, but her mother, who was travelling in the car directly behind her daughter's, witnessed the entire scene. Understandably, the community was outraged that three totally innocent people had been killed, three others had suffered injuries and that two families had been devastated within a few days...

Early on November 16, 1988, a young lady was coming home from visiting with friends when she was struck by a man being chased by police [for a broken head light]. After nine hours in a trauma center, her magnificent heart could no longer wage the battle for life and she left this world with her family behind. The young lady's name was Desere, she was nineteen years old and she was my daughter.[3]

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[3] Gerald LaCrosse founded The Desere Foundation after his daughter, Desere, was killed as a result of a police pursuit of a traffic offender. The above quoted passage details the events which occurred in Evesham Township, N.J in 1988 which precipitated the formation of The Desere Foundation and was published in Alpert & Fridell, supra note 2, at 148-49.

The above quoted passage details the devastating effect that police pursuits can have on families and communities. Each year thousands of people are injured and killed during the course of police pursuits. Many noted criminologists and police officers have opined that the most deadly weapon in the police officer's arsenal is a police vehicle.[4] A police vehicle or vehicle fleeing from the police travelling at sixty miles per hour has a greater potential for harm than a bullet from a gun.[5] Despite the vast number of persons injured and killed each year from police pursuits, the police vehicle remains the last unregulated weapon in a police officer's arsenal.

Unfortunately for the numerous victims of police pursuits, many courts have failed to interpret the Constitution as providing any meaningful restrictions on the activities of police officers during high speed pursuits. Amicus submits that the reasons for providing victims of reckless police pursuits with constitutional remedies are compelling because many victims are totally innocent third parties who are injured while police engage in high-speed pursuits of traffic offenders. Based on a historical and statistical analysis, there are substantial reasons for providing the victims of police pursuits with

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[4] Geoffrey P. Alpert & Patrick Anderson, The Most Deadly Force: Police Pursuits, 3 Justice Quarterly 1 (1986).

[5] See illustration attached as Appendix A taken from the State of California, Commission on Peace Officer Standards and Training, Basic Course Instructor Unit Guide 19, Vehicle Operations (July 1996).

constitutional protections.

Every citizen's right to life is protected from governmental intrusion by the Constitution of the United States. With respect to law enforcement activities, the U.S. Constitution guarantees minimal levels of conduct during the course of such activities. In the Fourth Amendment setting, this Honorable Court held in Tennessee v. Garner, 471 U.S. 1 (1986), "It is not better that all **felony** suspects die than that they escape." Id. at 11 (emphasis added). Accordingly, this Honorable Court held that the Constitution protected a suspected fleeing felon's right to life and freedom from deadly and unreasonable force.

In the Eighth Amendment setting, this Honorable Court held in Farmer v. Brennan, 114 S.Ct 1970 (1994), "A prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment. [cites omitted]. This case requires us to define the term `deliberate indifference,' as we do by requiring a showing that the official was subjectively aware of the risk." Id. at 1974. Therefore, even convicted prisoners have a right to be protected from risks known to jailers. Accordingly, while almost all police activities are subject to constitutional scrutiny, the police vehicle remains the last unregulated weapon in a police officer's arsenal. It would be a travesty of justice if this same Constitution failed to recognize that a totally innocent third party killed during a reckless police pursuit did not have the same constitutional right to life as a suspected fleeing felon or a convicted prisoner. While case law has determined that the protections provided by the Fourth

and Eighth Amendment of the Constitution do not apply in the police pursuit setting, protections should be afforded by the substantive due process component of the Fourteenth Amendment.

The touchstone of the substantive due process clause is the protection of an individual's right to life and freedom from arbitrary governmental activity. See Daniels v. Williams, 474 U.S. 327 (1986). While merely negligent conduct is insufficient to trigger substantive due process protections, this Honorable Court in Daniels expressly reserved the question "whether something less than intentional conduct, such as recklessness or 'gross negligence,' is enough to trigger the protections of the Due Process Clause." Id. at 334 n. 3. Amicus submits that when officers display reckless disregard or deliberate indifference to the risks of high-speed pursuits and they cause injury, they are engaging in arbitrary governmental conduct. Given the sheer number of persons who are injured and killed during these pursuits, Amicus submits that the Fourteenth Amendment must provide constitutional restrictions on the activities of police officers during the course of police pursuits in order to reduce the number of tragedies resulting from police pursuits.

To illustrate the widespread problems associated with police pursuits and why injuries resulting from police pursuits are deserving of constitutional protection, Amicus submits that a review of the available data on pursuits would afford this Honorable Court with

extremely pertinent information in resolving this issue.[6] Unfortunately, there is no national requirement for police departments to keep pursuit statistics. Accordingly, it is hard to accurately determine the exact number of pursuit related injuries and deaths which occur each year. However, there are several important resources and studies which may shed some light on the risks associated with police pursuits.

One source of information on pursuit related tragedies comes from the National Highway Traffic Safety Administration (hereinafter referred to as NHTSA). Since 1980, NHTSA, through the Fatal Accident Reporting System (hereinafter referred to as FARS), has attempted to maintain data concerning fatalities stemming from police pursuits nationally. However, it should be noted that these statistics do not purport to include all pursuit related deaths.[7] Despite the shortcomings of the FARS reporting procedures, the following pursuit related deaths were reported to NHTSA from 1980-1996:[8]

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[6] See generally Geoffrey P. Alpert, et al., The Constitutional Implications of High-Speed Police Pursuits Under a Substantive Due Process Analysis: Homeward Through the Haze, 27 U. Mem. L. Rev. 599 (Spring 1997).

[7] The 1993 FARS Newsletter stated, "These changes will maximize our ability to recognize fatalities on the file related to police pursuit; still we won't be able to record all pursuits resulting in fatalities." See also Charles, supra note 2, at 3.

[8] The NHTSA Reports for 1980-1996 are attached as Appendix B. It should be noted that the figures for 1995 and 1996 are neither complete nor final.

1996 - 377
1995 - 383
1994 - 392
1993 - 347
1992 - 298
1991 - 307
1990 - 317
1989 - 300
1988 - 296
1987 - 256
1986 - 309
1985 - 279
1984 - 246
1983 - 295
1982 - 307
1981 - 266
1980 - 331
Total - 5,306

Since 1980 NHTSA has documented 5,306 deaths occurring during the course of pursuits nationally. This figure, although admittedly under-reported by NHTSA, equates to approximately one pursuit related death every day. It is significant to note that according to the NHTSA statistics, California, the jurisdiction where the case sub judice arose, leads the nation in pursuit related deaths with 863 reported pursuit-related deaths during that 16 year period. Texas has the second largest number of pursuit-related deaths during that time period with 459 deaths.

In comparison, the Federal Bureau of Investigation keeps statistics on police use of firearms in the Uniform Crime Reports, Crime in the United States (hereinafter referred to as UCR). The UCR indicates that police officers reported the following firearm-related justifiable homicides from 1991 - 1995:[9]

1991 - 361
1992 - 411
1993 - 451
1994 - 460
1995 - 380
TOTAL 2,063

From 1991 - 1995, there were 1727 pursuit-related deaths and 2063 firearm-related deaths. It is significant to note that in 1995, the number of pursuit-related deaths exceeds the number of justifiable homicides committed by law enforcement even though the figures regarding pursuits are neither complete nor final. Amicus submits that the sheer number of deaths resulting from pursuits is alarming and warrants constitutional protection to victims of pursuit related activities. Given the fact that the use of firearms by police has been constitutionally restricted since the landmark decision of Tennessee v Garner, 471 U.S. 1 (1985), Amicus submits that the Constitution

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[9] Uniform Crime Reports, Crime in the United States, Fed. Bureau of Investigation, U.S. Dep't of Justice, 1995 (Released Oct. 13, 1996). The pertinent portions of this study are attached as Appendix C.

should similarly place constitutional restrictions on police pursuits.

While the NHTSA statistics only attempt to reflect the fatalities resulting from police pursuits annually, they fail to detail many other important aspects of pursuit activities such as the reason for the pursuit, the duration of the pursuit, whether crashes result from pursuits, whether injuries result from pursuits, etc. It should be noted that the data collection procedures from study to study may be dissimilar. While differences exist in the pursuit figures provided by police agencies, it is remarkable that the rates of crashes, injuries, and deaths are so similar over time and location.[10] Regardless of these imperfections, however, the data presented are representative of our current knowledge of pursuit driving.

California Highway Patrol, Pursuit Study

One of the earliest studies on pursuit driving was conducted in 1983 by the California Highway Patrol (CHP).[11] The CHP study reports findings from an analysis of almost 700 pursuits. The data are organized into two categories: 1) the result of the pursuit; and 2) the reason or motivation for initiating the pursuit. The results indicate the following:

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[10] Geoffrey P. Alpert, Pursuit Driving: Planning Policies and Action from Agency, Officer, and Public Information, 7 Police F. 3 (Jan. 1997).

[11] See California Highway Patrol, Pursuit Study (1983), reprinted in Alpert & Fridell, supra note 2, at 101-03.

1. 683 pursuits were conducted;
2. 198 pursuits (29%) resulted in accidents;
3. 99 pursuits (15%) resulted in injuries;
4. 7 pursuits (1%) resulted in deaths;
5. 27 pursuits (4%) were voluntarily terminated by the officer;
6. 429 pursuits (63%) were initiated for traffic offenses;
7. 179 pursuits (26%) were initiated for DUI;
8. 75 pursuits (11%) were initiated for serious criminal activity; and
9. 243 pursuits (36%) were voluntarily terminated by the driver who surrendered.[12]

Miami and Metro-Dade Studies

In the recent past, there has been considerable research conducted on pursuits in Dade County, Florida.[13] The major findings, most of which are consistent with data

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[12] Id. at 101-02.

[13] See Geoffrey P. Alpert & Roger G. Dunham, Police Use of Deadly Force: The Miami Experience, in Critical Issues In Policing: Contemporary Readings at 480 (1990) cited in Alpert & Fridell, supra note 2, at 105; see generally Geoffrey P. Alpert & Roger G. Dunham, Police Pursuit Driving: Controlling Responses to Emergency Situations (1990).

reported in the other studies, include the following information from pursuits occurring from 1985-1987:

1. 952 pursuits were conducted;
2. 364 pursuits (38%) resulted in crashes;
3. 160 pursuits (17%) resulted in injuries;
4. 7 pursuits (.7%) resulted in deaths;
5. 40 pursuits (4%) were voluntarily terminated by the officer;
6. 512 pursuits (54%) were initiated for traffic offenses;
7. 19 pursuits (2%) were initiated for reckless driving or impaired driving;
8. 312 pursuits (33%) were initiated for serious criminal activity;
9. 646 pursuits (68%) resulted in an arrest; and
10. 341 pursuits (36%) resulted in arrests for non-persuitrelated offenses (mostly drug and weapons charges).[14]

A more recent study of Metro-Dade police pursuits for the years 1990-1994 funded by the National Institute of Justice was released in May 1997.[15] The results are as follows:

1. 1,049 high-speed pursuits were initiated;
2. 448 (45%) were initiated for traffic offenses;

[14] See Alpert & Fridell, supra note 2, at 105-08.

[15] See Geoffrey P. Alpert, Police Pursuit: Policies and Training, National Institute of Justice: Research in Brief (May 1997).

3. 45 (4%) were initiated as a result of a broadcast stating "be on the lookout" for a suspect vehicle;
4. 334 (35%) were initiated for suspected felony offenses;
5. 157 (16%) were initiated because of a suspect vehicle;
6. 55 (0.05%) were initiated for unknown reasons;
7. 428 (41%) of pursuits resulted in collisions;
8. 257 (20%) of pursuits resulted in injuries;
9. 10 (3%) of pursuits lasted less than one minute;
10. 37 (10%) of pursuits lasted 2-4 minutes;
11. 206 (59%) of pursuits lasted 5-10 minutes;
12. 99 (28%) of pursuits lasted 11 or more minutes.[16]

It is important to recognize that in 1992, the Metro-Dade Police Department changed its pursuit policy from a judgmental policy, one in which the officer makes most of the operational decisions during a pursuit, to a restrictive policy which limits pursuits to known violent felons. This change in policy resulted in a drastic reduction of pursuits from 279 in 1992 to 51 in 1993. Significantly, Deputy Director G. Thomas Arnold of the Metro-Dade Police Department indicated at the 20th Annual Conference of the Police Executive Research

[16] Id. at 3.

Forum (PERF) in June of 1997, that the crime problem in Miami was unaffected by the change to a restrictive policy.

Baltimore County Study

The Baltimore County Police Department also conducted an analysis of its pursuit data. In 1994, an officer, Tom Lucadamo, conducted an extensive study of pursuits instituted by officers of his police department over a six year period:

1. 1,064 pursuits were reported;
2. 388 pursuits (36%) resulted in a crash (1 crash every 2.7 pursuits);
3. 586 pursuits (55%) were initiated for traffic offenses;
4. 60 pursuits (6%) were initiated for reckless driving or impaired driving; and
5. 266 pursuits (25%) were initiated for suspected felonious activity.[17]

Minnesota Board of Police Officer Standards Study

In 1988, the Minnesota Board of Peace Officer Standards and Training (POST) promulgated pursuit

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[17] Jeffrey Sense and Thomas Lucadamo, To Pursue or not to Pursue? That is the Question: Modeling Police Vehicular Pursuits, XV Am. J. Police 55 (1996).

policy guidelines for statewide adoption.[18] POST required all law enforcement agencies to collect and submit for analysis a minimum of eleven data elements concerning pursuits and the outcomes of those pursuits. All police departments in Minnesota were reporting their pursuits by October 1989. The Minnesota Highway Patrol maintains separate records and was involved in 123 pursuits in 1994 with 86 (70%) resulting in collisions and 30 (24%) resulting in injuries. The data provided by Minnesota POST (1995) reflect information reported during the 1994 calendar year for all other agencies:

1. 764 pursuits were conducted;
2. 307 pursuits (40%) resulted in crashes;
3. 205 pursuits (27%) resulted in injuries;
4. 1 pursuit (.1%) resulted in death;
5. 30 pursuits (4%) were voluntarily terminated by the officer;
6. 420 pursuits (55%) were terminated when the violators stopped;
7. 519 pursuits (68%) were initiated for traffic offenses;
8. 40 pursuits (5%) were initiated for DUI;
9. 126 pursuits (16%) were initiated for felony vehicle;
10. 16 pursuits (2%) were initiated for warrant

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[18] See Minnesota Board of Police Standards and Training: A Study of Deadly Force by Police Officers (1991), cited in Alpert & Fridell, supra note 2, at 108-09.

service.[19]

The data reveal the types of pursuits that were conducted in Minnesota and how they were terminated. From 1989 to 1995, the following numbers were reported:

1. 5,903 pursuits;
2. 4,102 (70%) were initiated for traffic offenses;
3. 2,443 (41%) resulted in crashes; and1,553 (26%) ended in injuries.[20]

Illinois Study

James Auten conducted a study of 700 pursuits from 129 agencies that took place in Illinois during 1991 and 1992.[21] There is, however, no data from the state's two largest agencies, the Chicago Police Department or the Illinois State Police. The statistics demonstrate the following:

1. 273 pursuits (39%) resulted in crashes (1 in

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19 Geoffrey P. Alpert et al., Police Pursuit & The Use of Force: A Final Report to National Institute of Justice (April 1996) at Ch. 3, p. 4.

20 Id. at 5.

21 See 1 & 2 James Auten, An Analysis of Police Pursuit Driving Operations, Champaign, Illinois Police Training Institute (1994).

2.6);
2. 77 pursuits (11%) resulted in injuries (1 in 9.2);
3. 12 pursuits (1.7%) resulted in death (1 in 58);
4. 385 pursuits (55%) were initiated for minor traffic offenses;
5. 77 pursuits (11%) were initiated for suspected stolen vehicles;
6. 70 pursuits (10%) were initiated for suspected DUI/DWI;
7. 84 pursuits (12%) were initiated for felony offenses;
8. 68 pursuits (9.7%) were terminated by the pursuing officer or supervisor;
9. 518 pursuits (74%) resulted in arrests; and
10. 145 pursuits (21%) resulted in felony arrests.[22]

Aggravated fleeing and eluding, criminal damage to property, and motor vehicle theft comprised 75% of the charges.[23] The study concluded that pursuits for any reason are dangerous and must be managed. With respect to pursuits for traffic offenses, Auten opined:

> For at least 46 people that ultimate penalty for running a stop sign, speeding, failure to yield, improper passing, etc., was an injury or death.

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22 Id.

23 2 Auten, supra note 20, at 867.

> That's ridiculous! If public safety is in fact the ultimate goal, then it seems rather obvious that pursuits initiated for this reason should be eliminated.[24]

Using National Safety Council estimates for injury and fatal accidents, Auten estimated the total economic loss from the pursuits to be $5,994,010, an average of $22,118 per pursuit-related collision.[25] Further, Auten calculated that 31% of all accidents involved innocent bystanders **and that the most common terminating event (39%) was a wreck.**[26] One of the most important figures Auten reports is that only thirteen pursuits of suspected felons resulted in arrests. These and the other 687 pursuits resulted in twelve deaths, 273 crashes, and almost $6,000,000 in economic loss. From his data, Auten concludes:

> It must be acknowledged that police officers cannot be given the unrestricted authority to engage in pursuits. There is ample evidence to indicate that officers' decisions to initiate or continue a pursuit are often characterized by faulty decision making. .

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24 Id. at 806.

25 See 1 Auten, supra note 20, at 16. There are no estimates for legal costs, agency costs for investigation of the accident, or possible policy violations included in this figure.

26 See 2 Auten, supra note 20, at 867.

> . . These are the situations that must be restricted if the protection of the public is the foundation of police operations.[27]

AAA FOUNDATION FOR TRAFFIC SAFETY STUDY

In April of 1992, David Falcone, Michael Charles and Edward Wells conducted a study of pursuits conducted in Illinois funded by the AAA Foundation for Traffic Safety. The study surveyed all available past studies on pursuits. This study revealed:

1. 1% to 3% of pursuits end in death;
2. 5% to 24% of pursuits end in injuries;
3. 18% to 44% of pursuits end in crashes;
4. 9% to 30% of pursuits were initiated for violent felonies; and
5. 52% to 63% of pursuits were initiated for traffic offenses.[28]

Omaha, Nebraska Study

The City of Omaha modified its policy in 1994 to permit pursuits for law violations that previously would have been against policy. As a result, the number of

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27 Id. At 806.

28 Charles, supra note 2, at 6.

pursuits increased from just 17 in 1993 to 122 in 1994.[29] The study of pursuits from 1992 - 1994 revealed:

1. 229 pursuits were reported;
2. 119 pursuits (51.9%) lasted one minute;
3. 89 pursuits (39%) lasted 2-4 minutes;
4. 10 pursuits (5%) lasted 5-10 minutes;
5. 3 pursuits (1%) lasted over 11 minutes.
6. 112 pursuits (51%) were initiated for traffic offenses;
7. 89 pursuits (40%) were initiated for felony offenses;
8. 72 pursuits (32%) resulted in collisions;
9. 91 pursuits (40%) resulted in property damages;
10. 31 pursuits (14%) resulted in injuries.[30]

These statistics clearly indicate that police pursuits are extremely dangerous activities and that each year thousands of victims are injured and killed as a result of police pursuits. As previously stated, the police vehicle remains the last unregulated weapon in a police officer's arsenal. The number of persons injured and killed each year during police pursuits is more alarming when one considers that the majority of pursuits are conducted for minor traffic offenses. Amicus submits that police

29 See Alpert, supra note 15, at 3.

30 Id.

officers should not be able to risk the lives of the public in their zeal to apprehend suspects, especially persons suspected of committing minor offenses. If the primary goal of law enforcement is to protect the public and lives, pursuits must have constitutional limitations and restrictions commensurate with other law enforcement activities.

In Petitioner's Brief and the Amicus Briefs submitted in support of the Petitioner, it is claimed that officers should be allowed unfettered discretion in pursuit activities and should be immune from the probable consequences of pursuits. Petitioner would allow these extremely dangerous pursuits to continue regardless of whether the officers already had information which would make apprehension at a later time possible through proper investigative procedures without exposing the public to the dangers of a high-speed pursuit.

It is significant that almost all Briefs in support of the Petitioner argue that the California Highway Patrol Study performed in 1983 provides support for their position. Interestingly, that study concluded that "a very effective technique in apprehending pursued violators may be simply to follow the violator until he voluntarily stops or crashes."[31]

Amicus submits that involuntarily utilizing citizens of the United States as rolling roadblocks during police pursuits is patently unconstitutional. Further, all Briefs in support of the Petitioner's position fail to point out, as the

31 California Highway Patrol Pursuit Study, (1983) at 17, reprinted in Alpert & Fridell, supra note 2, at 103.

Ninth Circuit did in Lewis at 442, that a police officer's most valuable tool in diminishing the risks that a pursuit poses to the public is to discontinue the chase.

Amicus submits that this Honorable Court should recognize that constitutional rights are violated when police officers act with deliberate indifference or reckless disregard to the risks of pursuits. For reasons more fully explained in the Amicus Brief filed by ATLA, Amicus submits that the "shocks the conscience" standard utilized in Fagan v. Vineland, 22 F.2d 1292 (3rd Cir. 1992) has never been adequately defined and will not provide either law enforcement or the public with a clear standard that will protect the constitutional rights of citizens of the United States and reduce the number of tragedies stemming from police pursuits. On the other hand, the "deliberate indifference" or "reckless disregard" standard will provide reasonable and meaningful restrictions on pursuit-related activities and will serve to restrict police officers from engaging in pursuits when the risk of injury and death to the public from a pursuit are greater than the societal need for immediate apprehension of the suspect.

As this Honorable Court noted in the Fourth Amendment setting in Tennessee v. Garner, 471 U.S. 1 (1986), "It is not better that all felony suspects die than that they escape." Id. at 11. In Garner, this Honorable Court determined that the apprehension of criminals, even if they are suspected felons, has its constitutional limits. Amicus submits that police officers should be similarly restricted in their efforts to apprehend suspected criminals through the use of police pursuits due to the significant number of persons who are injured and killed each year

by police pursuits. This loss of life is particularly alarming given the fact that many of the victims of pursuits are totally innocent third parties and the vast majority of pursuits are initiated for minor traffic offenses.

Consistent with the goal of law enforcement to protect lives and public safety, Amicus respectfully submits that this Honorable Court should affirm the Ninth Circuit Court of Appeals and hold that a police officer violates the substantive due process rights of a victim injured in a pursuit when the officer displays "deliberate indifference" to or "reckless disregard" of the risks of a pursuit.

CONCLUSION

Based on the foregoing argument and reasoning, Amicus respectfully moves this Honorable Court to affirm the Ninth Circuit Court of Appeals and hold that the proper standard to be applied in substantive due process police chase cases is reckless disregard or deliberate indifference.

RESPECTFULLY SUBMITTED,

ANDREW C. CLARKE
Counsel of Record
STOPP
SOLUTIONS TO THE TRAGEDIES
OF POLICE PURSUITS
6256 Poplar Avenue
Memphis, Tennessee 38119
(901) 680-9777
Attorney for *Amicus Curiae* STOPP

CERTIFICATE OF SERVICE

I, Andrew C. Clarke, a member of the bar of this Honorable Court, hereby certify that three copies of the *Amicus Curiae* Brief of STOPP in the above referenced matter have been served on the following persons:

Michael Baum
Paul J. Hedlund
Attorney for Respondents
Kananack, Murgatroyd, Baum & Hedlund
12100 Wilshire Boulevard, Suite 950
Los Angeles, California 90025

Terence John Cassidy
Marcos A. Kropf
Attorney for Petitioners
Porter, Scott, Weinberg & Delehand
350 University Avenue, Suite 200
Sacramento, California 95825

Andrew C Clarke

Andrew C. Clarke

APPENDIX A

BASIC COURSE INSTRUCTOR UNIT GUIDE

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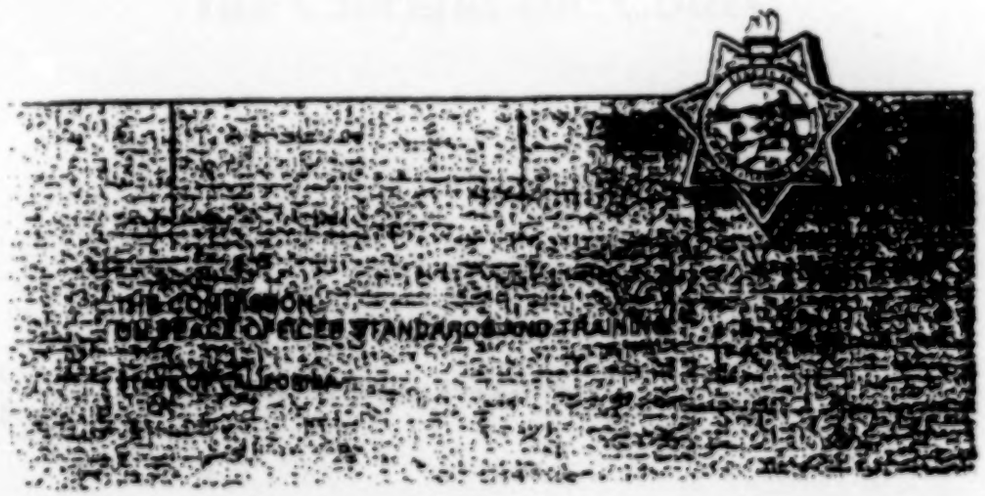
VEHICLE OPERATIONS

July 1998



BEST AVAILABLE COPY

ILLUSTRATION #1

.44 Magnum Revolver		Car	
Weight of Bullet	240 grains	Weight of Vehicle	4000 pounds
Muzzle Velocity	1600 fps. (1090 mph)	Velocity	88.02 fps. (60 mph)
Foot pounds of energy at muzzle	1400	Foot pounds of energy at impact with stationary object:	Approximately 480,000
People it could kill - maybe 4 with an average of 325 fp per person.		People it could kill about 1477 with an average of 325 fp per person.	

The NHTSA statistics

identified as Appendix B

have been lodged with

the Clerk of the Court

APPENDIX C

U.S. Department of Justice
Federal Bureau of Investigation

Crime in the United States

1995

Uniform Crime Reports

Release Date, Sunday, October 13, 1996

Law Enforcement Response

The 1995 clearance rate for murder, 65 percent for law enforcement agencies nationwide, is higher than for any other Crime Index offense. Eighty percent of murders in rural counties, 66 percent of those in suburban counties, and 63 percent in the Nation's cities were cleared. Among the city population groups, those with populations under 25,000 reported the most successful clearance rate, 81 percent. (See Table 25.)

Regionally, the highest murder clearance rates were registered in the South and the Midwest, each with 70 percent. Following were the Northeastern States with 59 percent and the Western States with 58 percent.

The proportion of juvenile involvement, as measured by clearances, was lower for murder than for any other index crime. Persons under 18 years of age accounted for 9 percent of the willful killings cleared by law enforcement nationally in 1995. Only persons in this young age group also accounted for 9 percent of clearances in the Nation's cities and suburban counties. They accounted for 7 percent of the rural county clearances.

Law enforcement agencies made an estimated 21,230 arrests for murder in 1995. Fifty-six percent of the arrestees in 1995 were under 25 years of age, with the 18- to 24-year age group accounting for 41 percent of the total. (See Table 38.)

Ninety-one percent of those arrested for murder in 1995 were males and 9 percent, females. Blacks comprised 54 percent of the total; whites, 43 percent; and the remainder, other races.

The 1995 murder arrest total was 6 percent lower than the [illegible]. During the 2-year period, arrests of adults decreased 4 percent and those of juveniles dropped 14 percent. Arrests of females for murder were down 11 percent, and those of males, down 6 percent.

Long-term trends indicate the 1995 murder arrest total was 15 percent below the 1991 level but 8 percent higher than the 1986 figure.

Justifiable Homicide

Certain willful killings are classified as justifiable or excusable, based on law enforcement investigation. In Uniform Crime Reporting, justifiable homicide is defined as and limited to the killing of a felon by a law enforcement officer in the line of duty, or the killing by a private citizen of a felon during the commission of a felony. These offenses are tabulated independently and are not included in the murder count.

In 1995, the total number of justifiable homicides decreased 20 percent. The justifiable homicide total was 631 in 1995 and 815 in 1994. Compared to the 1991 count of 698, the 1995 total was down 7 percent. Of justifiable homicides in 1995, 383 involved law enforcement officers and 268 were by private citizens. Data on weapons showed that handguns were the weapons used most often in justifiable homicides. (See Tables 2.16 and 2.17.)

Table 2.16—Justifiable Homicide by Weapon, Law Enforcement,[1] 1991–1995

Year	Total	Total firearms	Handguns	Rifles	Shotguns	Other guns (type not stated)	Knives or other cutting instruments	Other dangerous weapons	Personal weapons
1991	367	361	319	18	23	7	1	3	2
1992	418	411	357	22	31	15	6	1	3
1993	453	451	391	22	28	12	—	2	2
1994	462	448	406	21	20	6	—	1	1
1995	383	380	343	13	19	4	—	3	—

[1] The killing of a felon by a law enforcement officer in the line of duty.

Table 2.17—Justifiable Homicide by Weapon, Private Citizens,[1] 1991–1995

Year	Total	Total firearms	Handguns	Rifles	Shotguns	Other guns (type not stated)	Knives or other cutting instruments	Other dangerous weapons	Personal weapons
1991	331	286	242	13	25	13	29	6	2
1992	394	311	264	10	30	3	31	8	6
1993	357	313	256	15	25	11	28	9	7
1994	353	316	265	17	29	16	19	13	5
1995	268	239	179	18	28	8	24	10	6

[1] The killing of a felon, during the commission of a felony, by a private citizen.